

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Review of the Commission's)
Regulations Governing Television)
Broadcasting)

Television Satellite Stations)
Review of Policy and Rules)

MM Dockets 91-221, 87-8,
94-150, 92-51, and 87-154

To: The Commission

**FURTHER COMMENTS OF MILLER BROADCASTING, INC.
IN RESPONSE TO PUBLIC NOTICE REQUEST REGARDING TELEVISION LMAs**

Miller Broadcasting, Inc. (Miller), the licensee of Television Broadcast Station KMCI, which operates on Channel 38 at Lawrence, Kansas, by counsel, hereby respectfully submits its comments in response to the *Public Notice* (the Notice), DA 97-1246, released June 17, 1997, relative to the use of Local Marketing Agreements (LMAs) in the Television Broadcast Service. The Commission has asked for additional factual information regarding parties to all television LMAs. For its comments, Miller states as follows:

1. Miller filed extensive comments on this subject on February 7, 1997, in response to the *Second Further Notice of Proposed Rule Making* in MM Dockets 91-221 and 87-8, FCC 96-438, released November 7, 1996. These comments are supplemental thereto. It is the position of Miller that TV LMAs can, and in the case of Miller, do provide competitive and diversity benefits to both the brokering parties and to the public. Miller also urgently reiterates its request that the Commission grandfather TV LMAs in effect as of the

effective date of any new rules, should the attribution proceeding be resolved by any finding that TV LMAs are to be considered as ownership interests for purposes of local multiple ownership limitation regulations.

2. Miller would respond to the Commission's request for additional information as follows:

(1) Miller Broadcasting, Inc. is a small, family-owned and operated broadcasting company, which was formed for the purpose of acquisition of the construction permit for Channel 38 at Lawrence, Kansas. Miller began operation of KMCI, Channel 38 as the licensee, initially with a network affiliation agreement with Home Shopping Network, Inc. which provided one program type. The station is now airing programming pursuant to an LMA with Scripps Howard Broadcasting Company, an Ohio Corporation (Scripps). Scripps Howard is the licensee of KSHB-TV, Channel 41, Kansas City, Missouri, among other stations.

(2) The Nielsen Designated Market Area in which both KMCI and KSHB are located is Market 32, Kansas City, Missouri.

(3) KMCI and Scripps Howard's KSHB have largely overlapping city grade contours, as they serve the same market. However, the contours are not co-terminus; KMCI includes city-grade coverage within the Topeka DMA (141), while KSHB, on information and belief, does not provide any significant city-grade coverage to the Topeka DMA.

(4) Miller and Scripps Howard entered into the LMA agreement March 27, 1996, though the programming was not provided

until shortly thereafter, due to intervening Federal court litigation by Home Shopping Network, Inc., which attempted to preclude Miller, as a licensee, from changing the programming of KMCI. This effort was unsuccessful, and no injunction was issued.

(5) The term of the LMA is ten years from the commencement date. There is no renewal provision. However, the agreement is cancelable upon six months' advance notice by the Licensee. The Licensee also has extensive discretion in the airing of programming provided under the LMA.

(6) Substantially all of KMCI's weekly broadcast hours are brokered to the brokering station, subject, however, to the unfettered obligation and entitlement of Miller to provide non-commercial public affairs, children's, and public interest programming, and the absolute preemptive entitlement of Miller to refuse to air any programming which in its judgment is unsuitable.

(7) Miller has no network affiliation for KMCI at the present time. Scripps Howard's KSHB is an NBC affiliate.

(8) The reported Nielsen all-day audience share (measuring 9 a.m. through midnight) for KMCI has varied, but most recently was a 3 share. Prior to the LMA, KMCI did not achieve a Nielsen audience share.

3. As to the last category of information desired, Miller has now had approximately a year's experience with the LMA between Miller and Scripps Howard. It has during that time been enabled, due to that LMA, to create an image in the community as a "family station". For example, due to the type of programming provided,

which is best characterized as a rich mixture of family and children's programming, KMCI has come to be regarded as a sponsor for family activities in the service area, because its audience demographics are in that category. This was not the case prior to the LMA, when KMCI was viewed as simply a home shopping station, and the demographics were more oriented toward elderly women than families. Since the LMA, KMCI has become a sponsor for "TLC", or "Temporary Lodging for Children", which is a Johnson County child care center for children caught in parental domestic disputes. This is the kind of community involvement that was made possible by the image of the station in the community, which in turn was characterized by the programming provided under the LMA. KMCI has also become the "Home of the Wizards", the professional soccer team in Kansas City, which would have been impossible prior to the Scripps Howard LMA.

4. Also since the LMA went into effect, the LMA with Scripps Howard has resulted in capital improvements to the station, including a complete auxiliary power facility, and upgrades to the station's transmitter. These will allow the continuation of programming during power failures from severe weather emergencies, which are common in the area.

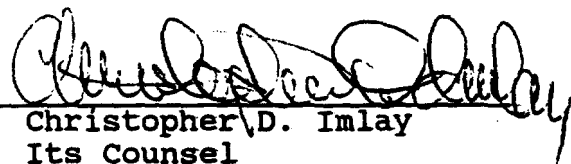
5. Thus, it is apparent that the LMA has provided numerous opportunities for Miller, and has allowed Miller to develop the identity of the station as a promoter of family values and assistance, which was simply not possible otherwise.

6. It is urgent that any grandfather or transition provisions that the Commission may adopt, (depending on the outcome of the attribution proceeding, and depending on the extent to which the Commission intends to relax local television ownership rules), not invalidate LMAs in effect as of the date of any new rules, prior to the end of the existing terms of such agreements. The term of existing LMAs may be up to ten years. It is this type of agreement, and this length of term, that will allow a station to implement a long-term diversity plan. The public will benefit from such arrangements in the long term, as they are better served by diversified, educational, entertaining and informative local programming.

Therefore, the foregoing considered, Miller Broadcasting Company respectfully requests that the Commission craft final regulations governing television Local Marketing Agreements consistent with the foregoing comments, and with Miller's previous comments on the subject.

Respectfully submitted,

MILLER BROADCASTING, INC.

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